

# DEPARTMENT OF STATE

# AIRGRAM

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UNCLASSIFIED

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TO: Department of State

INFO: JAKARTA, PORT MORESBY

FROM: AmEmbassy CANBERRA

DATE: Jan. 10, 1979

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TAGS: PBOR, PLOS, AS, PP

SUBJECT: Australia and Papua New Guinea Sign Torres Strait Treaty

REF:

## DEPT. DISTRIBUTION

## ORIGIN/ACTION

EA\*

AF	ARA	CU	EA
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## SUGGESTED DISTRIBUTION

After several years of careful negotiations Australia and Papua New Guinea signed the Torres Strait Treaty on Dec. 18, 1978, in Sydney. The treaty, signed by the Prime Ministers and Foreign Ministers of both countries, will enter into force following the enactment of implementing legislation, and final ratification by Australia and Papua New Guinea. The treaty establishes sovereignty over islands in the Torres Strait area, and delimits the territorial seas of both signatories.

## Enclosures:

(to Jakarta; Port Moresby;  
INR/DDR/RGE; INR/REA; EA/ANZ; EA/PIA)

1. The Torres Strait Treaty: Explanatory Note  
Statement by Prime Minister Fraser  
Statement by Prime Minister Somare  
Statement by Foreign Minister Peacock  
Statement of Deputy Prime Minister Olewale
2. (6) copies of the Treaty: "Treaty Between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters"

Encl 2 not received with origin

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CLASSIFICATION

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CONTENTS AND CLASSIFICATION APPROVED BY:

CHARGE: Mr. Kirby

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A unique feature of the treaty is that it establishes a Protected Zone in the Strait, designed to preserve the traditional way of life and livelihood of local inhabitants of both countries who live in the area. The treaty contains provisions on protection of the marine environment. It prohibits mining and oil drilling of the seabed in the Protected Zone for 10 years. Commercial fishing in the Zone is to be regulated by the Treaty, with an equitable sharing of catches.

In his remarks at the signature ceremony in Papua New Guinea House, Prime Minister Fraser hailed the agreement as a major achievement, following difficulties which had resulted from the complex issues involved. He termed the Treaty "a permanent and equitable settlement." In his comments, Prime Minister Somare noted that at independence there were "only two small rainclouds" marring that happy occasion. One was aid, which had been quickly settled, and the other the boundary problem. Somare said the essence of the new treaty "is a fair and reasonable distribution of jurisdiction over resources." In praising the treaty he said relations with Australia "are now not only good, but very friendly and productive as well - I might even say cloudless."

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THE TORRES STRAIT TREATY : EXPLANATORY NOTE

Embargoed until  
3.00 p.m.  
18 December 1978

Introduction

The "Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two countries, including the area known as Torres Strait, and Related Matters" - sometimes referred to as the "Torres Strait Treaty" - was signed at Papua New Guinea House in Sydney on 18 December 1978 by the Prime Ministers and Foreign Ministers of Australia and Papua New Guinea.

2. The Treaty will not enter into force until it is ratified by both countries. Ratification will not take place until legislation to enable the implementation of the Treaty provisions has been enacted in Australia and Papua New Guinea, and any constitutional requirements have been met.

Main Features of the Treaty

3. This explanatory note gives a brief summary of the main features of the Treaty. It is not an interpretative document.

Sovereignty Over Islands and Delimitation of Territorial Seas

4. The Treaty sets down the agreed position of the two countries on their respective sovereignty over certain islands in the Torres Strait, and on the delimitation of their respective territorial seas in the Torres Strait area.

Maritime Jurisdiction:Seabed and Fisheries Resources

5. The Treaty establishes a fair and equitable division of sovereign rights over fisheries and seabed resources in the whole area between the two countries. This extends some

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2000 kilometres from the Arafura Sea, through the Torres Strait and out into the Coral Sea. The seabed and fisheries jurisdiction lines are shown on the maps annexed to the Treaty.

Protected Zone

6. The Treaty establishes a Protected Zone in the Torres Strait to protect the traditional way of life and livelihood of the traditional inhabitants of both countries who live in or near the Strait. The traditional inhabitants will be able to continue to carry out their traditional activities, including traditional fishing, and to move freely about the Zone for this purpose.

Immigration, Customs, Quarantine and Health

7. The two countries are to cooperate in the application of their immigration, customs, quarantine and health procedures in such a way as not to prevent or hinder such free movement but each country will retain the right to implement national controls to prevent possible abuse.

Protection of the Marine Environment in the Protected Zone

8. The Treaty contains provisions covering agreed principles, parallel measures to be taken by, and cooperation between the two Governments for the protection and preservation of the marine environment.

Prohibition of Mining and Drilling of the Seabed

9. There is to be a prohibition of mining and oil drilling of the seabed in the Protected Zone for 10 years from the date of entry into force of the Treaty.

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Protected Zone Commercial Fisheries

10. The Treaty provides for cooperation between the two countries in the conservation and management of the commercial fisheries in the Protected Zone, and for sharing the catch of those fisheries on an equitable overall basis. The two countries are to cooperate in the issue of licences for those fisheries, and in inspection and enforcement arrangements.

Freedoms of Navigation and Overflight

11. The Treaty provides that there will be appropriate freedoms of navigation, overflight and passage for Australian and Papua New Guinea vessels and aircraft, as well as for the vessels and aircraft of other countries, based on principles of international law, in the Torres Strait area.

Consultation and Liaison

12. The Treaty makes provision for consultation between the two countries on its effective implementation and on any matters relating to it. Each country is to appoint a national representative to facilitate implementation of the Treaty at the local level. An Advisory Council will be established to keep implementation of the Treaty under review.

Prepared by the  
Department of Foreign Affairs, Canberra,  
and by the  
Department of Foreign Affairs and Trade, Port Moresby  
December, 1978.

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EMBARGOED FOR RELEASE 3 P.M. 18 DECEMBER 1978

TORRES STRAIT TREATY

STATEMENT BY THE PRIME MINISTER FOR  
AUSTRALIA, MR MALCOLM FRASER, ON THE  
OCCASION OF THE SIGNING OF THE TORRES  
STRAIT TREATY, AT PAPUA NEW GUINEA  
HOUSE, ON 18 DECEMBER 1978

Prime Minister, Ministers and Distinguished Guests,

Thank you Mr Prime Minister for your very kind words on this most important occasion for our two nations.

The signing of this Treaty represents the culmination of a great deal of patient effort and detailed discussion between the Governments of our two countries.

There have been difficulties along the way which is only natural because of the complex issues involved and the need to resolve these issues in the best interests of the local people.

All parties to the negotiations have exercised skill, understanding and forbearance in bringing about an equitable and permanent settlement of all outstanding issues relating to the Torres Strait, and to the delimitation of maritime boundaries in the whole area between our two countries.

It is especially gratifying that we have here with us today Sir Maclean Kiki, who played a constructive role in the early negotiations during his term as Foreign Minister, and Mr Olewale, who has had made such a major contribution to the successful conclusion of the negotiations.

On Australia's side, I extend a very warm welcome to the three Island Group Chairmen, Mr Getano Lui, Mr George Mye and Mr Joey Nona who have been such strong advocates of the interests of the Torres Strait Islanders. My colleague, the Foreign Minister Andrew Peacock, and the Queensland Premier and his Ministers are also to be complimented on their important roles in the successful conclusion of the Treaty.

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The facts that we have now been able to resolve this difficult and sensitive matter by direct negotiation between us and are meeting together in this amicable atmosphere are a true measure of the strength and warmth of the relationship between our two countries.

Mr Somare, his Ministerial and other colleagues, and the people of Papua New Guinea, are no strangers to Australia. We have longstanding bonds of friendship - a friendship which has been built up over many years and will remain firm in the years to come.

Mr Prime Minister, when you made your first visit to Australia as Prime Minister - shortly after my Government came to office - we both agreed that we should negotiate major long-term bilateral arrangements in the important areas of aid, trade, defence and civil aviation. We also agreed to work towards a permanent and equitable settlement on Torres Strait and related matters.

We entered into a unique long-term aid arrangement during that visit and, subsequently, have concluded substantive agreements and arrangements on trade, civil aviation and our defence relationship.

The signing of the Torres Strait Treaty today - and it is indeed a permanent and equitable settlement - is thus yet another landmark in the history of our relationship.

I look forward with confidence to the future of that relationship and believe that the signing of this treaty is a clear sign that our peoples and governments can and will meet any challenges that arise and will resolve them - between ourselves and in our own way.

I would like to endorse your sentiments Mr Prime Minister and to thank you all for being here today.

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EMBARGOED FOR RELEASE 3.00 p.m. 18 DECEMBER 1978

TORRES STRAIT TREATY

STATEMENT BY THE PRIME MINISTER OF PAPUA NEW GUINEA, MR MICHAEL SOMARE, ON THE OCCASION OF THE SIGNING OF THE TORRES STRAIT TREATY, AT PAPUA NEW GUINEA HOUSE, SYDNEY, ON 18 DECEMBER 1978.

I am not surprised to find myself here in Australia to sign this important boundary agreement. However, I think that some of the representatives of the press here might be surprised to see me. Not so long ago they seemed to regard me as another casualty of the famous Westminster system of government. As you can see, at the present time at any rate, the system is being kind enough to me. Although I am getting a reputation as a survivor, I can assure you that I am not a complacent one. I am particularly happy, as Prime Minister, to be signing this boundary treaty on behalf of Papua New Guinea. It is, indeed, a significant moment in the relations between the two countries.

In 1975, at the time of independence, the close co-operation between the two Governments in working for that event led to a remarkable degree of harmony and understanding. In the sunny skies of our friendship there were perhaps only two small rainclouds, one concerned aid, the other the boundary question. That cloud concerning aid was soon dissipated the present arrangements under which Australia contributes to the development of Papua New Guinea have been enthusiastically acclaimed by my Government.

The boundary problem was in some ways more worrying. At the time of independence there had been very little informed publicity at all about the situation in Torres Strait. Indeed one of the main difficulties throughout the negotiations has been caused by public statements from sources that had not grasped the issues or taken the trouble to learn the facts.

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The essence of the bargain that has now been reached - as we see it - is a fair and reasonable distribution of jurisdiction over resources. In arriving at this distribution, the parties have to a large extent ignored the possible distorting effect of islands in the area. It is this that has enabled Papua New Guinea to accept Australian sovereignty over the islands as a balancing concession.

From their original positions, both sides have clearly made substantial concessions. These are what I would call "honourable concessions". In moving to this final settlement each side has balanced a concern for its own interests with a regard for the particular concerns of the other side. This has given us a long and complicated document, but it is a document in which each part is important.

Speaking for Papua New Guinea I would not like to attach overriding importance to any particular feature of the Treaty. It is true that the interests of the people of the area have been carefully and properly taken into account. At the same time, my Government feels that the broader interests of Papua New Guinea as a whole have been provided for. For all its complexity, the agreement is a balanced one.

I must mention the great efforts by many people that have led to the formulation of this Treaty Text. I know that the Foreign Ministers on both sides have selflessly committed themselves to carrying forward negotiations over a long period. I must refer, in this regard, to the commitment of Sir Maori Kiki, our former Foreign Minister, to the attainment of a fair and equitable settlement. Sir Maori's contribution is a matter of record: I am sure it will be seen to be of lasting value to Papua New Guinea.

The contribution of officials of both Governments should also be noted: some have been engaged in the development of the concepts underlying this Treaty over five years of negotiations. The hours spent on this task have been long indeed.

In the course of the Treaty negotiations a great deal of research into little known matters has been carried out. I was most interested to see, on an old map unearthed and published by Australia, the inscription "the natives are treacherous and generally hostile". As it happens these words appear on the map next to the home area of Mr Olewal my Minister for Foreign Affairs and Trade. I must say that in the intervening years there has been dramatic improvement in our regard for one another - and partly due to the efforts of Mr Olewale.

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Of course, we all realise that there has been a fair amount of water under the bridge since 1878. We have even noticed that the Australians themselves have been much less hostile recently.

The truth is that relations between our two countries are now not only good, but very friendly and productive as well - I might even say cloudless. This Treaty has been possible because of those relations. May they long continue.



No.      Date

THE HON. ANDREW PEACOCK M.P.

M140      18 December 1978

EMBARGOED FOR RELEASE 3 P.M. 18 DECEMBER 1978

TORRES STRAIT TREATY

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS,  
MR ANDREW PEACOCK, ON THE OCCASION OF THE  
SIGNING OF THE TORRES STRAIT TREATY, AT PAPUA  
NEW GUINEA HOUSE, SYDNEY, ON 18 DECEMBER 1978

Prime Minister Somare, Prime Minister Fraser, Deputy Prime  
Minister Olewale, Distinguished Guests,

It gives me great personal pleasure and satisfaction  
to speak on this important occasion of the signing of the  
Torres Strait Treaty. This ceremony represents the culmination  
of years of careful negotiation on the part of both Governments.

I am appreciative of what has been said today  
about the role of the negotiators but wish to make two  
points about that.

- I do not believe that we could have reached  
such a successful conclusion had it not  
been for the dedication, the balanced  
judgment and the deep local knowledge  
of Mr Ebia Olewale, the Deputy Prime Minister  
and Foreign Minister of Papua New Guinea.  
I pay tribute also to the role played earlier  
by his able predecessor, Sir Maori Kiki.
- Nor, I believe, could this Treaty have  
been negotiated without the real interest,  
support and contribution of many Ministers  
of both Governments, of the State and  
Provincial leaders of both countries, and  
the Chairmen and Councillors representing  
the peoples who live in the Torres Strait  
area.

I do not wish to speak today in detail about the  
provisions of the Treaty. The principle basic elements  
incorporated in the Treaty were made public earlier this year.  
Further explanatory material, and copies of the full text of  
the Treaty, are being made available today.

There are, however, three important points I want  
to make.

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The first is that those involved in the negotiation of the Treaty faced a wide range of considerations and special circumstances unique to the area between Australia and Papua New Guinea. These included issues relating to sovereignty and sovereign rights and many intricate historical, legal, social and economic factors of great significance to the peoples of the two countries, and thus to the national interests of each country. What the Treaty has achieved is a balancing of these considerations and national interests in an agreement which is fair and equitable to both Australia and Papua New Guinea.

The second point is that our success in reaching a satisfactory Treaty settlement has depended in large measures, from the beginning, on the declared intention of both parties to reach agreement through bilateral negotiation. I think it most important that both our Governments have demonstrated their determination to adhere to this important principle of international law and that we have been able, through direct negotiation, to devise a peaceful, amicable and equitable solution between us. I add that I believe the Treaty we have signed today will be of much interest to the international community, not only in terms of giving force to the principle I have mentioned, but also in giving effect in practice to a number of developing principles of international law which have been and continue to be under discussion in the Law of the Sea conference.

My third point is that, while I believe we all can take satisfaction from today's signing ceremony, we must also give careful thought to the future of the Treaty arrangements. Attention will need to be given next year to the preparation of the legislation necessary to give effect to the Treaty. Looking further forward, the implementation of the Treaty provisions themselves will require careful handling and the closest consultation between Australia and Papua New Guinea at all levels if what we have now agreed in theory and principle is to be made to work effectively in practice. In all of this, the Australian Government looks forward to continuing the closest consultation and cooperation with the Government of Queensland and with the Torres Strait Islanders.

I have no doubt that the Treaty can and will be implemented successfully given the spirit in which it has been negotiated, and the sound basis of trust and good faith which I am confident will continue to underpin the close and warm relationship between the peoples and Governments of Australia and Papua New Guinea.

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EMBARGOED FOR RELEASE 3 P.M. 18 DECEMBER 1978

TORRES STRAIT TREATY

STATEMENT BY THE DEPUTY PRIME MINISTER OF  
PAPUA NEW GUINEA AND MINISTER FOR FOREIGN  
AFFAIRS AND TRADE, MR N. EBIA OLEWALE, ON  
THE OCCASION OF THE SIGNING OF THE TORRES  
STRAIT TREATY, AT PAPUA NEW GUINEA HOUSE,  
SYDNEY, ON 18 DECEMBER 1978

One of the unfortunate things about these good relations between countries we have been hearing about is that they create so much hard work. I know of the efforts on the Papua New Guinea side that had to be made to bring us to this moment. I believe that the efforts have been at least as great on the Australian side.

I know that my good friend Andrew Peacock has personally devoted much time and energy to achieving a settlement. As there have been similar difficult political exercises to perform on each side, I have been able to sympathise with him wholeheartedly.

As in many difficult and intricate negotiations, there have been times during the past few years when the participants have felt closer to one another than to some other people on the side they represent. If this spirit of closeness and mutual understanding had not been developed, I am sure that this agreement would not have been possible.

In Papua New Guinea, unlike Australia, we have three close boundary relationships with neighbouring countries, and each has its special features. Apart from the Torres Strait boundary, we have a long land boundary with the Republic of Indonesia, and very close island neighbours in the Solomons, south of the island of Bougainville.

Each of these boundaries calls for arrangements to be established that will allow the practical problems caused by the existence of a boundary line to be settled in a prompt, neighbourly and friendly way.

The boundary between Papua New Guinea and Australia does not only concern Torres Strait: in fact, the Torres Strait area represents only about one fifth of the length of the overall delimitation. Torres Strait is, however, the most politically intricate part of the boundary area because of the local interest that it affects on both sides.

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In Torres Strait the complications are many. For example, there is an established pattern of traditional movement to and from across national boundaries. Neither Government wishes to halt or obstruct this movement in any way, but precautions must be taken so that it does not become a screen for illegal activities by outsiders. I hope that we have provided an adequate framework to take account of our mutual interests on this matter.

Perhaps the most challenging questions raised in the negotiations were those affecting national jurisdiction over the resources of the sea and seabed. Our own position on this has been clear. Papua New Guinea is a developing country; as such it should be allowed to develop, and our Government is determined to see that it does.

In some ways the Western Province of Papua New Guinea, my own home area, is the least developed part of Papua New Guinea, but already the people are eager to do what they can in the cause of development. There is a limit to what the central government, with many competing calls on its finances, can do for them. The growing population of the coastal area of the Western Province intends to make the maximum use of the development opportunities available to it.

This means that there will inevitably be a growing pressure on nearby resources, including the resources of the sea and seabed. In this situation it is absolutely certain that an unfair resources boundary would, in the course of time, become a cause of resentment.

With this factor, and many other factors, in mind, we who have framed the provisions of this Treaty have had to grapple. In the process we have to explore compromises and to use imagination.

No-one knows what will happen in the future. If we had to perform this same boundary-making task in five or ten or twenty years time we would probably approach it differently. We have had to do the best we can in our present situation with all the limitations imposed by the circumstances.

I am sure that problems will arise in the administration of this complex boundary. These will be, for the most part, problems that would arise in any event, perhaps in a worse way. The Treaty cannot be blamed for pressures and trends that develop because of the simple fact that two countries are involved and therefore a boundary exists.

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Politics, it has been said, is the art of the possible. Boundary negotiation, also, is the art of the possible as all who have taken part in it will be acutely aware. Having said that, I say that we have done our best. I hope that we have built a framework that will serve the needs of our children.

We have come a long way since I had reason to complain about the Torres Strait situation in our Parliament in 1968. Although this is the end of the road - the road to the signing of an agreement - we now stand at the beginning of another road: the task of making it work. If we face that task in the same constructive way that we faced the first, it should not be too difficult.